

In the Matter of Merchant Mariner's Document No. Z-947900 and all other Seaman Documents
Issued to: ARTHUR EARL PENN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1178

ARTHUR EARL PENN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 11 February 1959, an Examiner of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS SANTA VENETIA under authority of the document above described, on and before 14 August 1957, Appellant wrongfully had in his possession certain narcotics, to wit: fertile marijuana seeds. (The date 14 August should be 14 July since the voyage ended on the latter date.)

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification. Evidence was introduced by both parties. Appellant testified that he did not know the seeds in his possession were fertile or unsterilized and, therefore, prohibited in this country.

At the conclusion of the hearing, the written arguments of the Investigating Officer and Appellant's counsel were considered. The Examiner then rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On a voyage concluded on 14 July 1957, Appellant was serving as an able seaman on board the United States SS SANTA VENETIA and acting under authority of his Merchant Mariner's Document No. Z-947900.

While the ship was in Yokohama, Japan, Appellant purchased three mynah birds and a quantity of hemp seed in excess of seven pounds. He made no attempt to conceal the birds or seed on the return voyage to the United States. Some of the seed was fed to the birds.

On arrival at San Francisco on or about 14 July, Appellant

deliberately failed to declare the birds and the bird seed to either the Customs officials or the Master of the ship. (On a prior occasion, another ship's Master required Appellant to get rid of bird seed from South America because it was "supposed to have marijuana seed in it" (R. 86).) No action was taken by Customs officials when Appellant openly departed the ship with the birds in cages and the seeds in a pillow case.

About a month later, Appellant was arrested in Seattle, Washington on a charge not in any way connected with the birds or seed. During routine search of the car he had rented, the police found seven and one-half pounds of seeds in the pillow case in the trunk of the car. On Appellant's person, there was found a piece of paper with the name and telephone number of a known narcotic addict who lived in Seattle. Appellant knew this man who was also a seaman.

Tests disclosed that seventy-eight per cent of the seeds were fertile and, therefore, capable of growing the Cannabis sativa plant, known as marijuana or hemp, from which usable marijuana is obtained. The seed from this plant is often used as bird seed in this country. The use of the seed is prohibited unless it has been sterilized in order to make it incapable of germination. R.45 and 26 U.S. Code 4761.

As a result of this seizure, Appellant was convicted before the Superior Court of the State of Washington on his plea of guilty to the charge of illegal possession of narcotics. This plea was induced on advice of counsel at the suggestion of the prosecuting attorney that a deferred sentence could probably be obtained by entering a guilty plea. The prosecuting attorney recommended and Appellant was given a deferred sentence of two years' imprisonment. (The record does not indicate the present status of this sentence which presumably was imposed with some specified period of probation.)

Appellant obtained a seaman's document in 1951 when he was nineteen years of age. His only other record with the Coast Guard is a two months' outright suspension, plus probation, in 1958 for failing to obey a direct order by the Master and for failing to perform his duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the ultimate finding that Appellant had wrongfully possession of marijuana is not supported by the evidentiary findings of fact since there is no finding that Appellant had knowledge of the fertile nature of the seeds or knowledge that it was, in fact, a narcotic. The decision is not supported by the findings of fact or by the evidence.

Wherefore, Appellant prays that the charge be dismissed.

APPEARANCE: Kane and Spellman of Seattle, Washington, by Joseph S. Kane,
Esquire, of Counsel

OPINION

It is my opinion that the contentions raised on appeal are without merit.

A prima facie case of wrongful possession was made out against Appellant by the rebuttable presumption of fact of conscious and knowing possession of contraband seeds arising from the proof of physical possession of the seeds. As stated by the Examiner, the possession was not wrongful if Appellant did not know that the seeds in his possession were fertile marijuana seeds. But prima facie proof placed the burden on the Appellant of going forward with the evidence in order to explain the possession to the satisfaction of the Examiner. See Roviaro v. United States (1957), 353 U.S. 53; Commandant's Appeal Decision No. 1165; 46 CFR 137.21-10.

The Examiner rejected Appellant's denial that he knew the prohibited nature of these seeds; and concluded, on the bases of Appellant's failure to declare the seeds to Customs and his prior involvement with similar seeds, that Appellant believed the seeds were fertile marijuana seeds. I agree with the Examiner that this conclusion was a reasonable inference to be drawn from the evidence, particularly because of Appellant's testimony that he did not think he would be permitted to keep the seeds, if declared, due to the prior incident. Therefore, there is no reason why the Examiner, who heard and observed the witness, should be overruled with respect to his refusal to believe Appellant's denial of knowledge as to the nature of the seeds. This was a question of credibility to be resolved by the trier of the facts. Although not mentioned by the Examiner, another factor which supports his conclusion is that Appellant was carrying the name and telephone number of a narcotic addict.

Wrongful possession of marijuana seeds is sufficient to require an order of revocation. Commandant's Appeal Decisions Nos. 511, 588.

ORDER

The order of the Examiner dated at Seattle, Washington, on 11 February 1959, is AFFIRMED.

J.A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 29th day of June, 1960.